

MARY VIOLA JONES

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7583]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7583) for the relief of Mary Viola Jones, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This proposed legislation was transmitted to the Speaker of the House by the Department of the Army and referred to this committee for consideration, and after a careful review of the file your committee recommends favorable consideration be given the bill. Communication from the Secretary of the Army is as follows:

DEPARTMENT OF THE ARMY,  
Washington 25, D. C., July 19, 1955.

HON. SAM RAYBURN,  
*Speaker of the House of Representatives.*

DEAR MR. SPEAKER: There is inclosed herewith a draft of a bill for the relief of Mary Viola Jones. The submission of this proposed legislation is in accordance with the procedures approved by the Secretary of Defense.

The purpose of this proposed bill is to pay to Mrs. Jones the amount which she would have received as beneficiary of an insurance policy on the life of her son, Sgt. Donald Jones, who died while a prisoner of war in Korea, if the policy had not lapsed prior to his death. The policy lapsed when the Government erroneously discontinued an allotment which Sergeant Jones had established for the payment of premiums.

Records of the Department of the Army show that Donald Jones was born at Philadelphia, Pa., on January 11, 1929. His mother is Mary Viola Jones, now residing at 909 Keener Avenue, Atlantic City, N. J. Donald Jones enlisted in the Regular Army on February 27, 1948, and was assigned service No. RA13266376. In July 1950, he held the rank of private first class, and was assigned to Battery A, 503d Field Artillery Battalion, Fort Lewis, Wash. He then had in effect the following voluntary allotments from his monthly pay for the purposes indicated:

Premiums on national service life insurance.....	\$6. 50
Premiums on insurance policy with the International Fidelity Insurance Co., Houston, Tex.....	8. 42
Premiums on insurance policy with American Investors Life Insurance Co., Dallas, Tex.....	6. 52
Support of his mother, Mrs. Mary Viola Jones.....	65. 00

On July 29, 1950, he absented himself without leave from his organization at Fort Lewis, Wash. The organization was then in the process of preparing for shipment to the Far East and on July 31, 1950, administrative action was taken by his organization to drop Private, First Class, Jones as a deserter and to discontinue the voluntary allotments from his pay. Private, First Class, Jones remained in an absent-without-leave status through August 2, 1950, but returned to duty before his organization left the United States on August 3, 1950. He sailed with his organization and arrived in Pusan, Korea, on August 16, 1950. On December 15, 1950, he was promoted to corporal. On February 12, 1951, he and 46 other men in his battery were reported missing in action while their unit was trying to penetrate an enemy roadblock approximately 10 miles north of Haeng Song, South Korea, to reach the safety of lines of United Nations Forces. It was learned that he had been captured by North Korean forces. On August 14, 1953, upon receipt of information that he had died during the month of April 1951, while a prisoner of war in Korea, a report of death was issued by the Department of the Army, indicating, in the absence of evidence to the contrary, that his death had occurred on April 30, 1951. Subsequent information obtained from returned prisoners of war established that he had died on April 28, 1951, as a result of pneumonia, while a prisoner of war in North Korea, and a corrected report of death was issued on August 12, 1954. In accordance with Department of the Army policy, he was promoted to the grade of sergeant posthumously.

Sergeant Jones received no pay after the month of July 1950, and therefore had no way of knowing that his allotments had been discontinued through administrative action. However, it appears that, following nonreceipt of the allotment for her support, Mrs. Jones wrote to him concerning the matter. She received an undated reply which, in pertinent part, is as follows:

"DEAR MOM: I guess you'll be pretty surprised to get this letter. We've been moving so much that this is the first time I've had really to write. In the first place I didn't cut the allotment off. The Government did. In the second place I haven't been paid either. I'm sorry about what happened, but can't do anything about it till I get back in the States. I was told that all my records are in the United States. When I do get paid, I will have quite a bit of cash. \* \* \*"

"I close with love

"DONALD."

In December 1950, the Department of the Army was notified by the Veterans' Administration that Sergeant Jones' insurance allotment had been discontinued. Investigation determined that, as stated above, he had been dropped from the rolls as a deserter and his volunteer allotments had been discontinued by his organization only 2 days after the initiation of his absence. Information as to any reason for discontinuance of his allotment on July 31, 1950, was requested from the 503d Field Artillery Battalion on December 11, 1950, which, on April 18, 1951, advised that all its retained files pertaining to matters of this type were lost on or about December 2, 1950, due to enemy action. Regulations in effect at that time provided that personnel in an absent without leave status would be dropped as deserters on the date of an organization's embarkation for overseas shipment (par 6d, SR 600-120-1 dated October 21, 1949) and that voluntary allotments of such absentees would not be discontinued until they had been absent for 10 days (par. 4b, idem). As Sergeant Jones sailed with his unit after an absence of only 5 days, it is evident that the action of his organization in administratively dropping him as a deserter and discontinuing his voluntary allotments was erroneous.

The allotment to the Veterans' Administration for national service life insurance was reinstated retroactively as was the allotment for the support of Mrs. Jones. Steps were taken to reinstate the life-insurance policies with the two private companies through the payment of all back premiums. This was agreeable to the American Investors Life Insurance Co., Dallas, Tex., and the policy with that company was reinstated. However, the International Fidelity Insurance Co. advised that it would not be agreeable to such a course of action until Sergeant Jones could be contacted to determine that the discontinuance was without his consent. Following the notification of Sergeant Jones' death, the company again advised that it was unable to reinstate the policy.

The International Fidelity Insurance Co., Houston, Tex., issued the policy in question, No. 4901, in the face amount of \$2,000 to Donald Jones under the date of August 1, 1948. Mary V. Jones, mother of Donald Jones, was named as beneficiary of the policy and was to receive the face amount, \$2,000, together with the reserve on all guaranteed coupons left with the company immediately upon receipt of due proof of death of Donald Jones. The policy also contained, among others, the following provisions and conditions:

"2. Grace: A grace period of 1 month, without interest, will be allowed for the payment of every premium or installment thereof, after the first, during which time this policy will remain in full force and effect, but in the event of the death of the insured during such period of grace any overdue premium, or installment thereof will be deducted in any settlement hereunder.

"Except as otherwise provided herein, if any premium on this policy is not paid when due, this policy becomes ipso facto null and void and all premiums paid hereon will be forfeited to the company, and the payment of the premium or installment thereof shall not maintain this policy in force beyond the date when the next payment becomes due except as hereinafter provided.

"3. Reinstatement: At any time within 3 years after default in any premium payment, and if the value of this policy has been applied to purchase other insurance in accordance with the terms of this policy and if such insurance shall be in force, and this policy shall not have been surrendered to the company and canceled, the policy may be reinstated upon evidence of insurability of the insured satisfactory to the company and the payment of all past due premiums, and the payment or reinstatement of any indebtedness to the company upon the policy, with interest at the rate of 5 percent per annum, compounded annually on such past due premiums and indebtedness."

In view of the above-quoted provisions, the policy could not have been reinstated unless the insurer was willing to waive its express provisions. As the company was unwilling to do this, Mrs. Jones has been denied the benefits thereunder, which her son, Sgt. Donald Jones, attempted to provide for her, because of an administrative error on the part of representatives of the United States.

Mrs. Jones has agreed to accept the amount of \$2,000 in full settlement and final satisfaction of her claim against the United States arising out of the lapse of this insurance policy. However, the claim may not be considered under the act of July 3, 1943, as amended (31 U. S. C. 223b), because the proceeds of an insurance policy, which lapsed through nonpayment of premiums resulting from dropping the insured from the rolls and the consequent cancellation of his allotment for such premiums, do not constitute "property." The claim may not be considered administratively under the terms of the Federal Tort Claims Act, as amended (28 U. S. C. 2671) as the amount involved exceeds \$1,000. The 2-year period during which suit may be instituted under that act commences on the date of the act or omission out of which the cause of action arises, not from the date that an individual is first made aware of it. As any cause of action in the present case arose on July 31, 1950, when the administrative action took place, or at the latest, on April 28, 1951, when Sergeant Jones' death occurred, the period had already expired when the first official notification of his death was made on August 14, 1953. There is no other statute under which the matter may be considered administratively and no way in which Mrs. Jones may be compensated other than through the enactment of private relief legislation.

The original lapse of the policy occurred not through any act on the part of Mrs. Jones or her son but because of a premature and erroneous administrative action by representatives of the Department of the Army. When Sergeant Jones received notice that such action had taken place, he was in combat in Korea. Before he had any opportunity to take steps to reinstate the policy, he was captured by the enemy and died while a prisoner of war. Under these circumstances, it appears entirely inequitable that his mother, to whose support he had been contributing and for whose protection he had obtained the policy, should be denied its benefits.

The Congress has, on occasion, favorably considered private relief legislation where insurance benefits have been denied because of acts or omissions of agents of the United States. One such case, known to this Department, was Private Law 206, 78th Congress (H. R. 2318, 78th Cong.). Another such bill, H. R. 8281, 83d Congress, for the relief of the estate of William B. Rice, was favorably considered by the House of Representatives on August 4, 1954, but appears to have been received by the Senate too late in the session for that body to take action. The bill was reintroduced in the 84th Congress as H. R. 2760, was passed by the House of Representatives on March 15, 1955, and since has been referred to the Committee on the Judiciary, United States Senate.

The cost of this bill, if enacted, will be \$2,000.

The Bureau of the Budget advises that there is no objection to the submission of the proposed bill for the consideration of the Congress.

Sincerely yours,

ROBERT T. STEVENS,  
*Secretary of the Army.*



